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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

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11 MARY ANN SUSSEX; MITCHELL PAE;)
12 MALCOLM NICHOLL and SANDY)
13 SCALISE; ERNESTO VALDEZ, SR. and)
14 ERNESTO VALDEZ, JR.; JOHN HANSON)
and ELIZABETH HANSON,)

15 Plaintiffs,)

16 vs.)

17 TURNBERRY/MGM GRAND TOWERS, LLC)
18 a Nevada LLC; MGM GRAND)
19 CONDOMINIUMS LLC, a Nevada LLC; THE)
20 SIGNATURE CONDOMINIUMS, LLC a)
Nevada LLC; MGM MIRAGE, a Delaware)
Corporation; TURNBERRY/HARMON AVE.,)
LLC a Nevada LLC; and TURNBERRY WEST)
REALTY, INC., a Nevada Corporation,)

21 Defendants.)
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Case No.: 2:08-cv-00773-RLH-PAL

ORDER

(Motion for Determination of Arbitrability
of Claims and Reinstatement of March 2,
2010 Order-#72; Counter Motion to Stay
and Permit Motion Practice on Sufficiency
of Plaintiffs' Allegations-#78)

23 Before the Court is Plaintiffs' **Motion for Determination of Arbitrability of**
24 **Claims and Reinstatement of March 2, 2010 Order** (#72), filed September 23, 2010. The Court
25 has also considered Defendants MGM Grand Condominiums LLC, Turnberry/MGM Grand
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1 Towers, LLC, and Turnberry West Realty, Inc.’s (the “Nonsignatory Defendants”) Opposition
 2 (#77), filed October 26, 2010, and Plaintiffs’ Reply (#79), filed November 11, 2010.

3 The Court has also considered the Nonsignatory Defendants’ **Counter Motion to**
 4 **Stay and Permit Motion Practice on Sufficiency of Plaintiffs’ Allegations** (#78), filed October
 5 26, 2010. The Court has also considered Plaintiffs’ Opposition (#80), filed November 11, 2010,
 6 and the Nonsignatory Defendants’ Reply (#81), filed November 19, 2010.

7 BACKGROUND

8 The Court directs the reader to its previous order (Dkt. #64, March 2, 2010) for a
 9 more detailed recitation of the facts of this case. As part of that order, the Court ordered limited
 10 “discovery to determine whether the remaining nonsignatory Defendants—MGM Grand
 11 Condominiums LLC, Turnberry/MGM Grand Towers, LLC, and Turnberry West Realty,
 12 Inc.—must defend against Plaintiffs’ claims in arbitration under ordinary contract and agency
 13 principals” because the Court did not have sufficient information to rule on the issue at that time.
 14 The Court granted the parties 90 days in which to conduct discovery and ordered a specific
 15 briefing schedule for supplemental memoranda. The Court also stayed the arbitration proceedings
 16 for all of the parties to the dispute pending resolution of whether the nonsignatory parties were
 17 required to arbitrate along with the other Defendants. *Id.* at 6.

18 After Plaintiffs submitted their discovery requests and upon determining that they
 19 were overly burdensome, the Nonsignatory Defendants withdrew their Motion for Determination
 20 of Non-Arbitrability of Claims against Nonsignatory Defendants (Dkt. #60). (Dkt. #65, Notice.)
 21 The Nonsignatory Defendants allegedly determined that it would be more cost effective to bring
 22 their defenses in arbitration rather than going through even limited discovery. However, as shown
 23 in the arbitration joint status report, the Nonsignatory Defendants sought to brief the question of
 24 whether they could be “compelled to arbitrate as alleged ‘alter egos’ absent specifically pleaded
 25 facts.” (Dkt. #72, Mot. Ex. 1 § 5.) While the Nonsignatory Defendants put this question in terms
 26 of a motion to dismiss under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v.*

1 *Iqbal*, 129 S. Ct. 1937 (2009) (*id.*), the arbitrator treated it as a question of arbitrability needing to
 2 be decided by this Court. (*Id.* at Ex. 2, Procedural Order No. 2.) After the arbitrator issued his
 3 order, Plaintiffs brought the instant motion seeking reinstatement of the Court's March 2, 2010
 4 Order (Dkt. #64) requiring discovery into the arbitrability issue. The Nonsignatory Defendants, on
 5 the other hand, brought a counter motion seeking a stay and the opportunity to bring a motion to
 6 dismiss under Federal Rule of Civil Procedure 12(b)(6). For the reasons stated below, the Court
 7 grants Plaintiffs' motion and denies the Nonsignatory Defendants' motion.

8 **DISCUSSION**

9 The Court adopts the reasoning of its March 2, 2010 Order (Dkt. #64) *in haec verba*
 10 and re-orders discovery per the schedule laid out in that Order. The Court notes that the
 11 fundamental situation has not changed since it issued the March 2 Order. The Court does not have
 12 sufficient information to determine whether the Nonsignatory Defendants are subject to the
 13 arbitration clause and, therefore, whether it has jurisdiction over them to determine the merits of
 14 Plaintiffs' case. Notwithstanding this order, the Nonsignatory Defendants may cede to the
 15 arbitration agreement and voluntarily choose to submit to the arbitration without contesting
 16 whether they can be compelled to arbitrate, if they want to avoid discovery. The Court presumes
 17 that the Nonsignatory Defendants would then be given the opportunity to file a motion to dismiss
 18 or similar pleading based on insufficient allegations in the arbitration at some point. The Court,
 19 however, cannot and will not entertain a motion to dismiss under Rule 12(b)(6) until after the
 20 arbitrability issue is determined or waived. Further, contrary to the Nonsignatory Defendants
 21 protestations, the discovery stay of the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
 22 §§ 77a *et. seq.*, only applies during the pendency of a motion to dismiss or a motion for summary
 23 judgment. *SG Cowen Sec. Corp. V. U.S. Dist. Court for the N. Dist. of Cal.*, 189 F.3d 909, 911
 24 (9th Cir. 1999). Since the Court cannot entertain such a motion until jurisdiction is determined,
 25 the discovery stay is inapplicable here. However, the Court notes that the discovery it orders is to
 26 be limited only to the issue of whether the nonsignatory defendants may be compelled to arbitrate

1 under contract and agency principles. This limitation shall be strictly construed and any discovery
2 actually intended to get to the merits of Plaintiffs' claims will not be allowed.

3 **CONCLUSION**

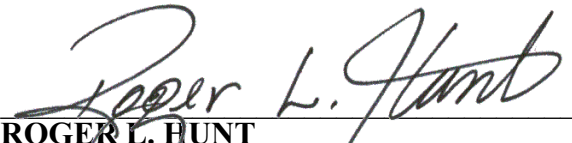
4 Accordingly, and for good cause appearing,

5 IT IS HEREBY ORDERED that Plaintiffs' Motion for Determination of
6 Arbitrability of Claims and Reinstatement of March 2, 2010 Order (#72) is GRANTED. As such
7 the arbitration described in Defendants' Motion (#72) is STAYED until further order of the Court
8 as follows:

9 The parties shall have 90 days from the date of this order to conduct discovery to
10 determine whether the remaining nonsignatory Defendants—MGM Grand Condominiums LLC;
11 The Signature Condominiums, LLC; MGM Mirage; and Turnberry West Realty, Inc.—must
12 defend against Plaintiffs' claims in arbitration under ordinary contract and agency principles.

13 The parties must file simultaneous supplemental memoranda, with accompanying
14 affidavits, on or before May 6, 2011. The memoranda (not including attachments and exhibits)
15 shall not exceed 30 pages. Responses shall be filed simultaneously no later than June 3, 2011, and
16 shall not exceed 20 pages. Based on the supplemental memoranda and responses, the Court will
17 resolve the issue at hand, and lift the stay on the arbitration proceedings.

18 Dated: February 3, 2011.

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21 **ROGER L. HUNT**
22 **Chief United States District Judge**
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